

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

APPLETON PAPERS INC.  
AND NCR CORPORATION,

Plaintiffs,

vs.

Case No. 08-CV-00016-WCG

GEORGE A. WHITING PAPER  
COMPANY, et al.,

Defendants.

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**DEFENDANT CITY OF APPLETON'S  
PROPOSED FINDINGS OF FACT IN SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGMENT ON ITS COUNTERCLAIM**

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Defendant, City of Appleton, submits the following proposed Findings of Fact in support of its Motion for Summary Judgment on its Counterclaim. Pursuant to Civil Local Rule 56.2, each statement is supported by appropriate citations to the record.

1. The Court has jurisdiction over this case under CERCLA § 113 (b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1331 (federal question). Dkt. No. 258 at ¶5.

2. Venue is proper under CERCLA § 113 (b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b). Dkt. No. 265 at ¶6.

3. Plaintiff Appleton Papers Inc. is a Delaware corporation with its principal place of business in Appleton, Wisconsin. Dkt. No. 265 at ¶7.

4. Plaintiff NCR is a Maryland corporation with its principal place of business in Dayton, Ohio. Dkt. No. 265 at ¶8.

5. Defendant City of Appleton is a Wisconsin municipal corporation organized

under the laws of the State of Wisconsin, with its principal place of business located in Appleton, Wisconsin. Dkt. No. 258 at ¶19.

6. Defendant City of Appleton operated a publicly-owned wastewater treatment facility (POTW) from approximately 1937 until the present. Walsh Dec. at ¶12; Dkt. No. 265 at ¶41; City of Appleton's Amended Response to API's Interrogatories, No. 2; Baldwin Dec. at ¶4, Exh. B.

7. Wastewater from the process of coating paper with an emulsion containing PCBs was sent by Appleton Coated Paper Company to the POTW from approximately 1954 until 1971. Walsh Dec. at ¶13; API's Second Amended Response to City of Appleton's First Set of Interrogatories, Nos. 9 and 16; Baldwin Dec. at ¶¶6, 7, Exhs. D, E.

8. The POTW, as a public utility, was required by state law from the period 1954 through 1971 to accept the wastewater discharged to it from anyone in its service area, which included Appleton Coated Paper Company. Walsh Dec. at ¶¶ 14, 15.

9. In 1968, Appleton Coated Paper Company completed an industrial wastewater survey form sent to it by the City of Appleton. Walsh Dec. at ¶16, Exh. C.

10. The information sought on the survey included "principal raw materials used." Appleton Coated Paper Company did not indicate that it was using PCBs when it completed the form. Walsh Dec. at ¶16, Exh. C; COA-FOX-00020224 to COA-FOX00020226.

11. In 1970, Appleton Coated Paper Company completed an industrial wastewater survey form sent to it by the City of Appleton. Walsh Dec. at ¶17, Exh. D.

12. The information sought on the survey included "amounts and kinds of chemical used daily." Appleton Coated Paper Company did not indicate that it was using PCBs when it completed the form. Walsh Dec. at ¶17, Exh. D; COA-FOX-00006031 to COA-FOX-00006032.

13. The plaintiffs did not tell the City of Appleton or the Appleton POTW about PCBs at any time during the production period. API's Second Amended Response to City of Appleton's First Set of Interrogatories, No. 1; Baldwin Dec. ¶5, Exh. C.

13. The City of Appleton was a member of a coalition of municipalities, wastewater treatment facilities, state and local government, and industries beginning in 1992 called the Fox River Coalition. Walsh Dec. at ¶4.

14. The purpose of the Fox River Coalition was to address the problem of PCB-contaminated sediment in the Lower Fox River in conjunction with the State of Wisconsin's Department of Natural Resources, by forming a plan and timetable for contaminated sediment clean-up. Walsh Dec. at ¶5.

15. As part of its participation in the Fox River Coalition, the City of Appleton made a payment to the State of Wisconsin, Department of Natural Resources, pursuant to a Cooperative Agreement, dated May, 1994. Walsh Dec. at ¶6, Exh. A.

16. The amount of the payment made was \$26,700.00. Walsh Dec. at ¶9, Exh. B.

17. The purpose of the payment made by the City of Appleton was to help finance a contract for the remedial investigation of certain contaminated sediment sites in the Lower Fox River that were identified in the Green Bay Remedial Action Plan Update and to fund a feasibility study of certain of these sites. Walsh Dec. at ¶8, Exh. A.

Dated this 2nd day of April, 2010.

Respectfully Submitted,

/s/Paul G. Kent

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**CITY OF APPLETON**

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